IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 78 OF 2005

MR.SALVADOR FERNANDES AND 5 ORS., ...Applicants

Versus

MR.FRANCIS XAVIER JACQUES, ...Respondent

Shri Rohit Bras De Sa,Advocate for the Appellants.
Shri Anthony D'Silva, Advocate for the Respondents.

Coram:- N. A. BRITTO, J.

Date:- 22nd June, 2006

P.C.

Heard Shri Rohit Bras De Sa, the learned Cousel on behalf of the petitioners and Shri Anthony D' Silva, the learned Counsel on behalf of the respondents.

2. The petitioners are some of the accused in Private Criminal Complaint No. 45/2001/C. The said complaint was filed by the respondent herein, 'Complainant' for short. The said Complainant was the Chairman of Batim Tenants Association, whose term expired on 08.11.1999 and at the elections held on 22.09.2000, the Complainant was defeated. The Complainant filed the complaint against the accused alleging that they had impersonated at the said elections and had voted. Which of the accused impersonated which of the persons, has been set out in Para 4 of the complaint. After preliminary inquiry, the learned J.M.F.C. by Order dated 29.01.2002, was pleased to order issuance of process against nine accused under Sections 416, 417, 418 and 419 I.P.C. Thereafter the accused, except A4, appeared before the Court on 08.05.2002, and since then, the case was adjourned from time to time for one reason or the other and it does appear that more often than not, it was

adjourned because one or the other accused chose to remain absent nor; that the Complainant was always present.

3. On 07.03.2005, A7 was found to be absent and apparently without any reason, and the learned J.M.F.C., ordered a N.B.W. to be issued against him and notice to be issued to surety. It also appears that learned Advocate appearing on behalf of the present petitioners, made a submission before the learned J.M.F.C., that arguments ought to be heard if not in the morning session but in the evening session and the case could be disposed of. This is found recorded in the roznama dated 07.03.2005, and it is the submission of Shri D' Sa, the learned Counsel appearing on behalf of the petitioners/accused that an oral request was made before the learned J.M.F.C., to stop further proceedings under Section 258 of the Code of Criminal Procedure, 1973, a fact which is otherwise not reflected in the said roznama dated 07.03.2005. On the same day, the learned J.M.F.C. found that the Complainant was absent and directed the Complainant to remain present on the next date i.e. 27/04/2005, and thereafter, the petitioners herein, approached this Court on 11.04.2005 and notice was issued by this Court on 17.06.2005 and since the petition was subsequently admitted by Order dated 03.08.2005, it has got now to be disposed of on merits of the same.

4. As already seen, although the petitioners as accused were served with process way back prior to 08.05.2002, for almost three years, the petitioners did not challenge the said Order issuing process against them either in revisional jurisdiction before the Court of Sessions or before this Court, which was otherwise available to them. In fact, it has been submitted on behalf of the Complainant and in my view rightly, that the Order dated 07.03.2005,is used as a camouflage to come to this Court to challenge the Order dated 29.01.2002, issuing process against the accused.

5. On behalf of the petitioners, reliance has been placed on the decisions in the case of Superintendent and Remembrancer of Legal Affairs v. Mohan Singh & Ors.(AIR 1975 S.C. 1002), wherein the Apex

Court has held, with reference to old Section 561-A of the Code, that inherent power of the High Court can be used to quash criminal proceedings in lower Courts whenever they are long drawn and when no prima facie case has been made out against the accused.

6. In my view, the observations of the Apex Court in the decision cited hereinabove, have no application to the case at hand at all. Firstly, as already stated and as rightly pointed out on behalf of the Complainant, the immediate cause for the petitioners to approach this Court appears to be the Order dated 07.03.2005, since otherwise there is no other reasons why the petitioners remained silent without challenging the said Order issuing process against them dated 29.01.2002, for such a considerable long period of time. Moreover, I have already stated that specific allegations have been made by the Complainant as to which of the accused impersonated which of the persons in Para 5 of the complaint. It is quite possible that the Complainant ought to have brought this fact before the Mamlatdar, who presided over the said meeting dated 22.09.2000, but only because the Complainant did not do so, would not necessarily mean that the allegations made by the Complainant are untrue. They are certainly required to be tested by giving an opportunity to the Complainant to support the same in the trial. Considering the said delay and the said allegations, this is not a fit case to quash the proceedings under inherent jurisdiction under Section 482 of the Code. As already stated, the delay in the inquiry before framing of charge appears to have taken place largely because one or the other accused remained absent and also presumably because the learned J.M.F.C. was not firm enough to ensure that all the accused attended the proceedings or applied for exemptions if there were any good grounds, on the given dates. It appears that the learned J.M.F.C. did make up his mind to proceed with the case on 07.03.2005 when he had ordered the Complainant to remain present but nothing happened thereafter as the petitioners approached this Court and obtained stay of further proceedings.

7. Nevertheless, in my view, considering that the inquiry has not even started for almost three years, this is a fit case to direct the learned J.M.F.C. to complete the said inquiry at the stage of framing of charge/discharge within a period of three months from the date of the receipt of this Order. To this limited extent, the petition is allowed. Parties are directed to remain present before the learned J.M.F.C. on 03.07.2006 at 10.30 a.m. Notice will be required to be issued to the other accused who are not represented before this Court.

Petition partly allowed.

N. A. BRITTO, J.

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